



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 162 3251]

SpyChatter, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before March 24, 2017.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/spychatterconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “In the Matter of SpyChatter, Inc., a corporation, File No. 162 3251” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/spychatterconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of SpyChatter, Inc., a corporation, File No. 162 3251” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D),
Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Attorney, (202) 326-2575, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2017), on the World Wide Web at:
<http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 24, 2017. Write “In the Matter of SpyChatter, Inc., a corporation, File No. 162 3251” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/spychatterconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

If you file your comment on paper, write “In the Matter of SpyChatter, Inc., a corporation, File No. 162 3251” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 24, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to SpyChatter, Inc. (“SpyChatter”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false representations that SpyChatter made to consumers concerning its participation in the Asia-Pacific Economic Cooperation (“APEC”) Cross Border

Privacy Rules (“CBPR”) system. The APEC CBPR system is a voluntary, enforceable mechanism that certifies a company’s compliance with the principles in the CBPR and facilitates privacy-respecting transfers of data amongst APEC member economies. The APEC CBPR system is based on nine data privacy principles: preventing harm, notice, collection limitation, use choice, integrity, security safeguards, access and correction, and accountability. Companies that seek to participate in the APEC CBPR system must undergo a review by an APEC-recognized Accountability Agent, which certifies companies that meet the standards.

Companies under the FTC’s jurisdiction are eligible to apply for APEC CBPR certification. The names of certified companies are posted on a public-facing website, www.cbprs.org. Companies must re-apply annually in order to retain their status as current participants in the APEC CBPR system. A company that falsely claims APEC CBPR participation may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the FTC Act.

SpyChatter is an app that is designed to enable private messaging. According to the Commission's complaint, SpyChatter has set forth on its website, <http://www.spychatter.net/privacy-policy/>, privacy policies and statements about its practices, including statements related to its participation in the APEC CBPR system.

The Commission's complaint alleges that SpyChatter falsely represented that it was a participant in the APEC CBPR system when, in fact, it never sought or obtained certification.

Part I of the proposed order prohibits SpyChatter from making misrepresentations about its participation in any privacy or security program sponsored by a government or any self-regulatory or standard-setting organization, including, but not limited to, the APEC CBPR

system.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires acknowledgment of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that SpyChatter submit an initial compliance report to the FTC. Part IV requires SpyChatter to retain documents relating to its compliance with the order. Part V mandates that SpyChatter make available to the FTC information or subsequent compliance reports, as requested. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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